



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,769	12/04/2003	Noel Mascarenhas	06078/231001	7590

7590 08/23/2005

Jonathan P. Osha
 Rosenthal & Osha, L.L.P
 Suite 2800
 1221 McKinney Street
 Houston, TX 77010

EXAMINER

STERLING, AMY JO

ART UNIT	PAPER NUMBER
----------	--------------

3632

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,769

Applicant(s)

MASCARENHAS ET AL.

Examiner

Amy J. Sterling

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the first Office Action for application number 10/727,769 Swing Down Fuel Bracket, filed on 12/4/03. Claims 1-15 are pending.

Election/Restrictions

Claims 16-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/24/05. Claims 16-21 have been cancelled.

Drawings

The drawings are objected to because in Figure 4, "418" is pointing to the "frame" and should be pointing to the "gas spring".

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "forklift truck" (claims 2, 11), the "dampener" (claim 9), "the means for dampening" (claim 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

Art Unit: 3632

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not adequately teach the “dampener” or “means for damping” The mere suggestion of a “dampener” that may be located in several locations does not adequately enable one skilled in the art to make or use the invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 15 recites a “dampener” and a “means for damping” and it is unclear as to which element this limitation is referring.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 6637706 to Kim et al.

The patent to Kim et al. discloses a single stage swing down fuel bracket having a frame means (10) immovably mounted onto a fork lift vehicle (2), a cradle (20) or support means operatively connected substantially parallel to a counterweight the frame

Art Unit: 3632

(10), a hinge (16, 32) or rotational means that pivotally connects a first end of the cradle to a first end of the frame and a latch (18, 0) or means for releasably engaging having a first portion (18) disposed on a second end of the frame and a second portion (70) disposed on a second end of the cradle, wherein the first portion of the latch is releasably engaged to the second portion of the latch, wherein after the latch is disengaged, the cradle is rotationally maneuverable between a retracted position and an extended position in single stage by simultaneously rotating outwardly and downwardly in relation to the vehicle, the cradle (20) being positioned at an angle to a side surface of the counterweight. Kim et al. also teaches a gas spring (50) or means for balancing a rotation of the means for supporting, having a first end operatively connected to the frame, and a pivot screw operatively connected a second end of the gas spring to the first end of the cradle, the gas spring providing a near full assist for maneuvering and resisting motion of the cradle, with a second latch (64), a set of straps (46a) operatively coupled to the cradle and arranged to be releasably engaged around a circumference of the fuel tank, and a dampener (40a) or means for damping,

Claims 1, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5845940 to Colburn.

Colburn teaches a frame (26) immovably mounted on a vehicle, a cradle (64) operatively connected to the frame, a hinge (46) that pivotally connected a first end of the cradle to a first end of the frame and a latch (52) having a first portion disposed on a second end of the frame and a second portion disposed on a second end of the cradle,

Art Unit: 3632

wherein the first portion of the latch is releasably engaged with the second portion of the latch, wherein after the latch is disengaged, the cradle is rotationally maneuverable between a retracted position and an extended position in a single stage, wherein the cradle may be maneuvered between the retracted position and the extended position by simultaneously rotating outwardly and downwardly to an angle of about 40 degrees in relation to the vehicle and an alignment pin (42).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following documents show various fuel tank brackets

5904372 to Ito et al.

5634665 to Jung

4846499 to Izumi et al.

4770428 to Sugiyama

4025080 to Gedeon

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (Mon-Fri 8am-5:00pm). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments), informal

Art Unit: 3632

amendments or communications 571-273-6823. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

A handwritten signature in black ink, appearing to read "Amy J. Sterling". The signature is fluid and cursive, with the first name "Amy" and last name "Sterling" clearly distinguishable.

Amy J. Sterling

8/10/05